

APPEALS PROCEDURE

BEFORE

- ADMINISTRATIVE LAW JUDGES, CUIAB

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, GOVERNOR

INTRODUCTION

Section 100 of the Unemployment Insurance Code (hereafter referred to as the Code) provides in part as follows:

“The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum.”

In California more than 900,000 employers are covered by provisions of the Code. They employ in excess of thirteen million workers who are potentially eligible for unemployment or disability benefits under this Code. In addition, thousands of ex-servicemen and former federal employees qualify for some form of unemployment compensation benefits under federal law, paid through offices of the California Employment Development Department (thereafter referred to as the Department). By interstate and international agreement, unemployed workers from the other 49 states, the territories of the United States and the provinces of Canada can claim unemployment compensation benefits through the facilities of the Department.

Many employers and workers have disputes with the Department over their respective rights and responsibilities. Each year more than 175,000 of these individuals exercise their right to have their disputes adjudicated by administrative law judges of the California Unemployment Insurance Appeals Board (hereafter called the Board); each year more than 15,000 claimants and employers file appeals from decisions to the Board itself.

The average citizen's personal experience with the judicial system is frequently limited to an occasional appearance in traffic court. On those rare occasions when he appears in court, an attorney at law generally supplies the necessary knowledge of the judicial procedure. However, thousands of workers and hundreds of employers who regularly appear represent themselves and are not fully aware of their rights, duties, and responsibilities. The purpose of this article is to give a brief explanation of the operating rules and practices of the Board to help parties present their cases.

THE APPEALS BOARD AND ITS ADMINISTRATIVE LAW JUDGES

The Appeals Board is an independent governmental agency with powers of a head of a department (section 407). It has a secretary/chief counsel, a chief administrative law judge, a staff of administrative law judges, and a clerical force (Unemployment Insurance Code sections 401-411).

The Appeals Board is comprised of seven members. Five are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Rules Committee. The members serve staggered terms of four years. The Board is not responsible to the Director of the Employment Development Department for its operations and decisions. The Department is required by statute to furnish equipment, supplies and housekeeping functions for the Board, and both agencies are subject to the same fiscal controls and audits.

INDEPENDENCE AND IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDGE

Section 404 of the Code provides in part as follows:

“The Appeals Board, or the executive officer subject to its direction and control to whom it delegates such responsibility, shall appoint and direct the activities of one or more impartial administrative law judges who shall hear and render a decision in every matter in which a petition is filed with, or an appeal is taken to, an administrative law judge as provided in this division.”

The impartial status of the administrative law judge is a distinctive feature of the unemployment insurance program in California. In many other states, hearing officers are employees of the Director of the Department and therefore potentially subject to his or her direction and control. Since 1943, this relationship has not existed in California. An employer or employee who files an appeal to review Department action has the benefit of an independent judgment. The Department, like the employer and the employee, is a party in appeals proceedings.

APPEALS AND PETITIONS

All appeals and petitions under the Code are filed in writing with the agency or department branch office where the case is located. If the person filing does not know the location, the document may be sent to any office of the agency or the department branch. An appeal or petition is considered filed on the date it is sent (Section 5000(gg), Title 22, California Code of Regulations; hereafter referred to as Board Rule).

FORM OF THE APPEAL OR PETITION

An appeal or petition need not be formal, nor is it required to be prepared in any special form (a letter will do). Appeals and petitions must be in writing and include the following: 1) the name and mailing address of the appellant or petitioner, 2) the employer account number, if any, of the appellant or petitioner, 3) the name and mailing address of any representative filing the appeal or petition; and 4) the name and social security number of any claimant who is a party. The appeal may also include the appellant or petitioner's telephone and/or electronic address; the date and case number of the underlying department action; a concise statement of the reasons for the appeal or petition; any request for language assistance or special accommodation; and the appellant or petitioner's signature and the date signed. (Board Rule 5008)

TIME LIMITS FOR FILING APPEALS AND PETITIONS TO AN ADMINISTRATIVE LAW JUDGE

Appeals and petitions arising under the Code and related state and federal statutes must be filed within the time limits provided by law (usually a period of from 10 to 55 days) as shown in the chart below.

Type of Appeal or Petition	Time Limitations
Unemployment Insurance Cases	20 days
Disability Insurance Case (State or voluntary plan)	20 days
Ruling Case	20 days
Disputed Coverage Case	30 days
Disputed Coverage Case (no response)	55 days
Tax Case (general)	30 days
<i>The above time limitations may be extended upon a showing of good cause for delay.</i>	
Tax Case (jeopardy assessment)	10 days
<i>Law does not permit extension of filing time.</i>	

PROCESSING OF APPEALS AND PETITIONS

Upon receipt of an appeal, the Department forwards its records to the Office of Appeals. The case is registered, a file is prepared and a case number assigned. The number should be used in corresponding with the Office of Appeals. A notice of hearing showing the date, time and place of hearing, and the case number is mailed to each party in advance of the hearing. An appeal information pamphlet is included which explains the rights of the parties and contains important information about the conduct of the hearing.

Upon receipt of a tax petition, the case is registered and a copy of the petition is furnished to the Department. The Department will prepare and file a written answer to the petition. This answer is filed in duplicate, one copy of which is mailed to the petitioner. The purpose of the answer is to advise the petitioner the basis for the Department's action. Now the case is ready to be set for hearing.

SCHEDULING OF CASES FOR HEARING

Section 1326 of the Code provides that benefits shall be promptly paid when due or promptly denied when the claimant is not eligible. Consequently benefit proceedings are given priority over tax and ruling proceedings in setting cases for hearing.

The time and place of hearing is determined by the Office of Appeals. Cases which have been filed first are generally heard first. The first in, first out practice is modified when necessary to save personal time and cost through consolidating cases involving the same party or by grouping cases by geographical locations.

Written notice of the time and place of hearing in an appeal is mailed to each party (including the Department) at least 10 days before the date of hearing. Written notice of the time and place of hearing in any tax petition is mailed at least 20 days before the date of hearing.

TIME ALLOTTED FOR HEARINGS

Benefit cases generally are set for hearings at intervals of one hour. Two hours or more are generally allotted for hearing a tax petition. This time allocation is based on the assumption that the appellant and respondent will not have more than one witness each. If a party believes that more time may be needed for the hearing because of the number of witnesses, need for an interpreter, or other reasons, please advise the Office of Appeals either at the time the appeal or petition is filed or immediately upon discovering that more time may be necessary. This will permit the Office to allow the additional time and avoid the expense and inconvenience of a second hearing.

WITHDRAWAL AND REINSTATEMENT

An appellant or petitioner may apply to withdraw an appeal or petition before a decision of the administrative law judge is sent to the parties. Upon such an application, the administrative law judge will order the appeal or petition dismissed. Once the appeal or petition is ordered dismissed upon an application to withdraw, it can be reinstated if the appellant or petitioner files an application for reinstatement within 20 days after the service of the order. The application must specify the reasons for reinstatement, and if the application is untimely, it must also specify the reasons for the delay (Board Rule 5050).

PROCEDURE IN PRESENTING CASES

The Appeals Board recognizes that most claimants and many employers have not previously attended a court or administrative hearing. Therefore, the procedure is explained at the outset. The Rules of the Board require the administrative law judge to inform parties of the order in which evidence will be given and to explain the issues which will be considered at the hearing (Board Rule 5062). When the hearing is convened, the administrative law judge also identifies the case by name and number, introduces himself/herself and states the names of the parties.

The administrative law judge generally admits into evidence or takes official notice of those records of the Department which give a history of the case and which are necessary to a disposition of the issue; you will be given an opportunity to explain statements in Department records with which you disagree. Usually the appellant or petitioner, having shown disagreement with the Department action by filing an appeal or petition, presents his or her case first. Thereafter, the respondent gives his or her evidence. An opportunity to ask questions of all witnesses and parties and present additional evidence is then allowed.

ROLE OF THE ADMINISTRATIVE LAW JUDGE

The administrative law judge may question any party or witness and admit into evidence any relevant information in possession of the Department. Because the administrative law judge has the expertise and the obligation to make certain that all relevant evidence is presented, the administrative law judge takes an active role in developing all the material facts in possession of the parties and their witnesses. The administrative law judge may conduct a large part of the examination of parties as witnesses. This results in a saving of time and cost to the parties and the Board. Any party or the party's representative may examine his or her own witnesses or the other party, if desired.

THE ADMISSIBILITY OF EVIDENCE

Section 1952 of the Code provides that "The Appeals Board and its representatives and administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties."

Appeals Board Rule 5062 provides that all testimony shall be taken only on oath or affirmation or under penalty of perjury. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. During the hearing, each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing parties and witnesses on

any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness; and to offer rebuttal evidence. An employer who intends to introduce business records into evidence should have at the hearing a person who can explain how such records were prepared.

You should bring to the hearing all evidence (witnesses and documents) which you believe has a bearing on your case.

SUBPOENAS FOR WITNESSES AND RECORDS

Either before or after a case is set for hearing, any party may request the administrative law judge to issue a subpoena for witnesses or records. A request for a subpoena to produce books, papers, memoranda or other records must be by affidavit and describe the matters desired and show why they are material to the issues in the case. Forms are available in all Offices of Appeals. Assistance in preparing the request will be provided if desired.

OBTAINING DEPARTMENT RECORDS AND WITNESSES

Section 1095 of the Code provides that any information in the possession of the Department that is necessary for a worker or an employer to safeguard his rights under the Code must be made available to him. These records may be examined by the parties during normal office hours in the Office of Appeals to which the case is assigned. You also can examine Department records on the day of hearing at the place of hearing prior to commencement of your hearing. If any party desires a record of the Department to be presented as evidence in a hearing or needs an employee of the Department as a witness in his case, the administrative law judge will issue a "Notice to Attend" to the Department which will request it to bring the record or the employee to the hearing.

CONTENTIONS AND ARGUMENT

At the conclusion of the hearing, the administrative law judge will, if requested, grant the parties the opportunity to "sum up" their case. After hearing the entire presentation by the parties, the administrative law judge closes the hearing and takes the case under submission.

THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

As soon as possible after the hearing is completed, the administrative law judge issues a decision. The decision will generally set forth (1) the issues and the facts that were found to be true after evaluating the evidence; (2) the applicable statutory, regulatory, court and Appeals Board legal principles involved, and an application of the legal principles to the facts; and (3) the conclusions and decision concerning the action of the Department.

Copies of the decision are mailed to all parties. Each decision is accompanied by an explanation of further appeal rights. After the decision has been mailed or served, it cannot be changed except to correct clerical errors. It may be reopened by an administrative law judge if one of the parties shows good cause for failure to attend the hearing (Board Rule 5067).

APPEALS FROM DECISION OF ADMINISTRATIVE LAW JUDGE

An appeal to the Board from an administrative law judge's decision need not be formal, but it must be in writing, signed, and should state the grounds or reasons for the appeal.

Upon receiving an appeal to the Board, the Board sends a letter which acknowledges receipt of the appeal and informs all parties of their rights, duties and obligations in connection with the appeal.

The Appeals Board, in reviewing the decision on appeal, is usually limited to the facts presented as shown in the official transcript of the case and the documents offered in evidence. For this reason, parties should present all of their facts at the administrative law judge's hearing. The Board may direct the taking of new or additional evidence on its own motion or on request of a party. The Board requires a request by a party to be in writing, show the materiality of the new or additional evidence to be offered and the reasons why it was not offered at the hearing before the administrative law judge. If permission to present new or additional evidence is granted, or the Board on its own motion has ordered the taking of additional evidence, the matter may be remanded to an administrative law judge for further hearing. In such cases, the further hearing is limited to the issues defined by the Board. If additional documentary evidence is offered, the Board may accept it without further hearing and offer the opposing party an opportunity to respond to the evidence (Board Rule 5102).

APPEALS BOARD REVIEW OF DECISION OF ADMINISTRATIVE LAW JUDGE

The Board has adopted “the weight of evidence” test in reviewing the record on appeal. Consequently, if the findings of fact are not against the weight of evidence, the Board will adopt them as its own.

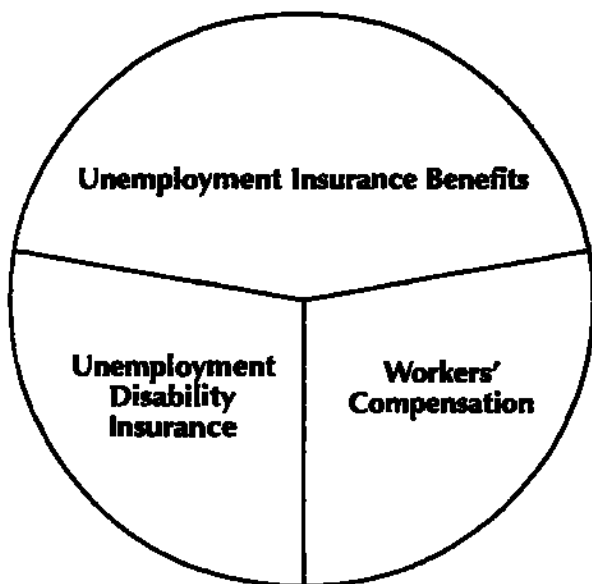
After reviewing the entire record and reading or hearing argument, if any, submitted by the parties, the Board issues its decision. The decision is in writing and sets forth the facts, the reasons for decision, and the decision. If the Board adopts the entire decision of the administrative law judge and incorporates such by reference in its decision, it attaches a copy of that decision to its decision. The Board Members do not sign their decisions as all decisions of the Board must be adopted at regularly scheduled meetings and must be recorded by the Board’s secretary. After a decision has been mailed or served, it is not subject to reopening, reconsideration or rehearing except to correct clerical or typographical errors (Board Rule 5108).

JUDICIAL REVIEW OF APPEALS BOARD DECISION

Section 410 of the Code provides that decisions of the Board shall be final “except for such action as may be taken by judicial tribunal as permitted and required by law.” Section 3264 of the Code provides that mandamus is the exclusive remedy for reviewing acts of the Board in denying disability benefits under a voluntary plan of insurance. It is well established that mandamus is the exclusive remedy in reviewing benefit actions of the Board. The statutory law relating to administrative mandamus is set forth in Section 1094.5 of the Code of Civil Procedure. Notwithstanding any other provision of law, the right of the director, or of any other party except as provided by Sections 1241, 1243, and 5310 to seek judicial review from an Appeals Board decision shall be exercised not later than six months after the date of the decision of the Appeals Board or the date on which the decision is designated as a precedent decision, whichever is later.

In tax proceedings involving the transfer of reserve accounts or the propriety of a tax rate, the Code provides for judicial review within 90 days after the issuance of the Appeals Board decision, which time may be extended by the Director of the Department for a period not to exceed two years. Mandamus is the remedy for reviewing tax proceedings in this category. In tax proceedings involving an assessment, a petitioner must first pay the assessment, claim a refund, have it denied, exhaust his administrative remedies and then file his judicial action in a court of competent jurisdiction (Sacramento County or a county where the Attorney General maintains a principal office) within 90 days of the action of the Appeals Board. This period may be extended for two years by the Director.

INTEGRATED SOCIAL INSURANCE SYSTEM



California has an “integrated program of social insurance each of which, operating in their respective spheres, is calculated to alleviate the burden of a loss of wages by a protected employee during a particular period of time. The contingencies foreseen are loss of wages through (1) involuntary unemployment; (2) industrially caused disability; and (3) disability of a non-industrial nature.” (Compensation Insurance Company v. Industrial Accident Commission, 128 Cal.App.2d 797, 276 P 2d 148).

The California Unemployment Insurance Appeals Board and its administrative law judges hear and decide appeals in the unemployment compensation phases of this integrated program while the Workers’ Compensation Appeals Board and its judges hear and decide appeals relating to industrially caused injuries.

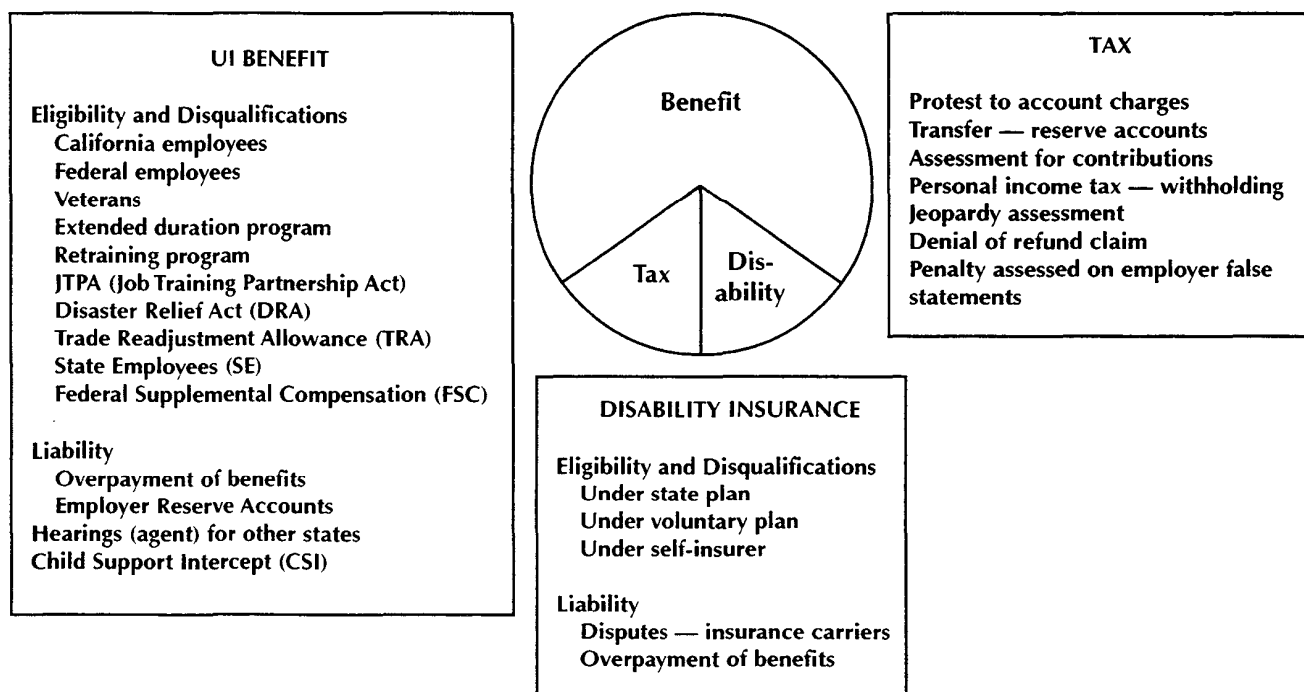
HISTORY OF THE APPEALS BOARD

The unemployment insurance program was adopted in California in 1936. From this inception until 1943, the unemployment insurance program in the Department of Employment was administered by a five-person commission appointed by the Governor. Appeals during this early period were heard by referees, and appeals from referees' decisions were decided by the commission.

In 1943, a separate three-member California Unemployment Insurance Appeals Board was established. In 1949, the Appeals Board became the appointive authority for its staff and was designated as a Division within the Department. Since 1949, the Board and its adjudicative staff have exercised an independent review of appeals and petitions from administrative actions of the Department. In 1967, the Legislature increased the Board's membership to five, two of whom must be California attorneys. In 1982, the Legislature increased the Board's membership from five to seven, two of whom must be California attorneys.

RESPONSIBILITIES HAVE GROWN

In 1938 when benefits first became payable under this program, administrative appellate jurisdiction was limited to unemployment compensation benefit claims. In 1944, appeals of ex-servicemen under Servicemen's Readjustment Assistance Act were assigned for adjudication, and in 1946, disability insurance appeals. In 1954, administrative law judges of the Appeals Board were granted the power to decide as well as to hear cases on tax petitions arising under the Code. At the present time, they hear and decide appeals and petitions in the programs in the chart shown.



“DUE PROCESS” – GOAL OF BOARD AND ADMINISTRATIVE LAW JUDGES

In addition to a broad knowledge of the programs and occupations, the administrative law judge must have both knowledge and experience in the proper use of the laws of evidence and procedure so as to control the course of the hearing to assure that parties have received “due process of law.” If a hearing is fair in fact as well as appearance, certain hearing standards must be followed:

The Appeals Board considers the following factors essential:

- (1) Putting everyone at ease at the beginning of the hearing by an introduction of the parties and the administrative law judge.
- (2) Explaining the order that individuals will testify and assuring each party of the right to question the party and his witnesses and to give additional evidence.
- (3) Explaining the issues and technical terms to increase understanding of what evidence will be relevant.
- (4) Recognizing that the appellant, by appealing, has expressed dissatisfaction with the action of the Department, the appellant’s evidence is usually heard first.
- (5) Emphasizing the separation of the roles of the Employment Development Department (executive) and the administrative law judge (adjudicative).
- (6) Assisting parties in asking questions of witnesses and developing by the party’s own questions relevant information.
- (7) Questioning the parties in a non-accusatory manner, preferably using questions which do not unnecessarily limit the answers.
- (8) Laying a proper foundation for the introduction of secondary evidence, documents, and “expert” testimony since lay parties are not aware of the significance of the evidence and may not be capable of making objections to the entry.

EDUCATIONAL PROGRAM FOR REVIEW

The Appeals Board, through its chief administrative law judge, regularly conducts meetings of the Board’s field (trial level) adjudicative staff to keep them abreast of developments in unemployment insurance and related law and to improve hearing techniques. Hearings and decisions are periodically reviewed for the purpose of discovering if there are any areas of improvement which should be called to the attention of the administrative law judge. If a decision is contrary to a Board precedent, a request is made by the presiding administrative law judge through the chief administrative law judge for the Board to assume jurisdiction, and if the request is granted, the Board decides the matter. To maintain the independent judgment of the administrative law judge, each decision is the decision of the administrative law judge; although the decision may have been reviewed and a request made to the Board to assume jurisdiction, the administrative law judge is neither requested nor required to alter his or her decision.

EDUCATIONAL PROGRAM FOR REPRESENTATIVES OF LABOR AND MANAGEMENT

On request made to any office of the Board, the Appeals Board will furnish a speaker and educational material to labor, management, or other interested groups, concerning unemployment insurance law and the appeals procedure before the administrative law judge and the Board.

The Administrative Law Judge’s Association has conducted each year since 1953 an annual forum. Members of management, labor, and the general public have accepted invitations to this forum each year, and the forum has been enthusiastically received by those attending. A wide range of educational topics are presented at Association forums. To be placed on the mailing list for information concerning Association forums, address a letter to any Office of Appeals.

PUBLICATIONS OF APPEALS BOARD

All precedent decisions of the Appeals Board are published and bound in volumes. In addition, the Board publishes an index-digest of selected benefit and disability decisions and a descriptive word index of tax decisions. Inquiries concerning the cost of bound decisions, digests and indexes should be directed to the Chief Counsel of the Board.

Board precedent decisions, digests of benefit and disability decisions, and tax descriptive word index are available for use by parties and their representatives in preparing for the hearing at any office of the Board. The presiding administrative law judge who is in charge of an Office of Appeals will be pleased to discuss with a party or his representative any procedural problems. A copy of the rules adopted by the Appeals Board for proceedings before the administrative law judge and the Board may be obtained at no cost from any Office of Appeals or the Appeals Board.

THE APPEALS BOARD TODAY

It is doubtful that any state in the nation presents greater problems for an unemployment insurance appeals agency than those existing in California. Its ever expanding population, its geographic with the concomitant problems of transportation and the need for decentralization, together with fluctuations in the economy combine to create a situation unique for an appeals body.

Today the Board has 12 Offices of Appeals in major population centers in addition to the Board headquarters in Sacramento. Each office has become responsible for the performance of clerical, hearing, and decision functions for appeals filed with it. A presiding administrative law judge supervises each Office of Appeals.

The Appeals Board has final responsibility for this program. It is assisted by the secretary/chief counsel and by the chief administrative law judges. The chief administrative law judge for field operations exercises general supervision over the 12 Office of Appeals. The chief administrative law judge for appellate operations exercises general supervision over personnel at the Board.

The address, phone number, and the supervisor of each office of the Appeals Board are shown on the following page.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

2400 Venture Oaks Way, Sacramento, CA 95833

P.O. Box 944275, Sacramento, CA 94244-2750

For additional information and a listing of current board members please visit us at: www.cuiab.ca.gov

FIELD OPERATIONS HEADQUARTERS(916) 263-0304

2400 Venture Oaks Way, Suite 200, Sacramento, CA 95833

Office of Chief Administrative Law Judge (916) 263-6722

Office of Tax Petitions (916) 263-6722

APPELLATE OPERATIONS

2400 Venture Oaks Way, Suite 300, Sacramento, CA 95833..... (916) 263-6803

FRESNO OFFICE OF APPEALS

590 West Alluvial Avenue, Suite 110, Fresno, CA 93711.....(559) 248-2520

INGLEWOOD OFFICE OF APEALS

9800 La Cienega Boulevard, Suite 901, Inglewood, CA 90301..... (310) 337-4302

INLAND OFFICE OF APPEALS

9655 Arrow Route, Building #19, Suite A, Rancho Cucamonga, CA 91729..... (909) 987-2212

LOS ANGELES OFFICE OF APPEALS

300 South Spring Street, Suite 1502, Los Angeles, CA 90013.....(213) 897-5267

OAKLAND OFFICE OF APPEALS

1515 Clay Street, Suite 902, Oakland, CA 94612.....(510) 622-3900

ORANGE COUNTY OFFICE OF APPEALS

6 Centerpointe Drive, 4th Floor, La Palma, CA 90623.....(714) 562-5560

OXNARD OFFICE OF APPEALS

1901 N. Rice Avenue, Suite 300, Oxnard, CA 93030..... (805) 485-5389

PASADENA OFFICE OF APPEALS

433 North Fair Oaks Ave, Suite 200, Pasadena, CA 91109.....(626) 304-7966

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2400 Venture Oaks Way Suite 100, Sacramento, CA 95833.....(916) 263-6706

SAN DIEGO OFFICE OF APPEALS

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SAN FRANCISCO OFFICE OF APPEALS

185 Berry Street, Lobby 5, Suite 200, San Francisco, CA 94107.....(415) 357-3801

SAN JOSE OFFICE OF APPEALS

2665 North First Street, Suite 208, San Jose, CA 95134.....(408) 232-3036